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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 31st July 2024

S.R.O. No. 391/2024—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated 29th June 2024 passed in the ID Case No. 10 of 2018 by the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Bhusan Steel Limited, [substituted by M/s Tata Steel BSL Ltd., now re-named as M/s Tata Steel Limited], Dhenkanal and Shri Pankaj Kumar Sahoo, At Gailo, P.O. Belapada, Dist. Dhenkanal was referred to for adjudication is hereby published as in the schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 10 of 2018

Dated the 29th June 2024

Present :

Shri Benudhar Patra, LL.M.,
Presiding Officer,
Industrial Tribunal,
Bhubaneswar,

Between :

The Management of M/s Bhusan Steel Limited, [substituted by M/s Tata Steel BSL Ltd., now re-named as M/s Tata Steel Limited], Dhenkanal.	. .	First Party—Management
And		
Shri Pankaj Kumar Sahoo, At Gailo, P.O. Belapada, Dist. Dhenkanal.	. .	Second Party—Workman

Appearances :

Shri Nitish Kumar Mishra, Advocate	. .	For the First Party
Shri Sushant Dash, Advocate	. .	For the 2nd Party

AWARD

The Government of Odisha in the Labour & E.S.I. Department, in exercise of powers conferred upon it by sub-section (5) of Section 12 read with Clause(d) of sub-section (1) of Section 10 of the Industrial Disputes Act,1947(for short 'the Act') have referred the following schedule of dispute for adjudication by this Tribunal vide Order No. 3491—IR(ID) 95/15-LESI, dated the 5th May 2018 :

SCHEDULE

"Whether the action of the Management of M/s Bhusan Steel Ltd. (substituted as Tata Steel Ltd. vide Order, dated the 1st October 2019) At Narendrapur, P.O. Kusupanga, Dist. Dhenkanal in terminating the services of Shri Pankaj Kumar Sahoo, Ex- Driver w.e.f. 2nd May 2014 is legal and/or justified ? If not, what relief Shri Sahoo is entitled to ?

1. At the outset, it is felt apposite to place on record some developments that have taken place during pendency of the proceeding relating to the affairs of the first party management. While the proceeding was pending adjudication before this Tribunal, on a petition being filed by the second party on 15th April 2019 to implead M/s Tata Steel BSL Ltd. as a necessary party to the dispute, order was passed on 1st October 2019 to substitute M/s Tata Steel BSL Ltd. in place of M/s Bhusan Steel Ltd. and again on the prayer of the second party that the management of M/s Tata Steel BSL Ltd. has in the meantime been renamed as M/s Tata Steel Ltd. and as such necessary insertion may be made in the order of reference, order was passed by this Tribunal on 12th August 2012 to add M/s Tata Steel Ltd. as a party to the dispute. In the above background, the present Award is confined to adjudicate the dispute between the second party and the management of M/s Tata Steel Ltd.

2. Pursuant to the order of reference, the second party filed his claim statement narrating therein that in April 2009 on an application being made by him to M/s Bhusan Steel Ltd., he was selected to be engaged as a Driver under it w.e.f. 20th April 2009 on a monthly wages of Rs. 3000 which was being revised from time to time and in the process he discharged his duties to the best satisfaction of his authorities. According to him, while under employment of the management although he was not issued with any appointment orders, yet he was assigned with the duty to drive a number of vehicles belonging to the management such as Mahindra Xylo bearing Registration No. OR 02 BZ 3059, Mahindra Scorpio bearing Registration No. OR 02 1484, Mahindra Bolero bearing Registration No. OR 06 8291' etc. and for performing such duties he was being issued with vehicle duty slips from time to time. It is stated that while working as such continuously under the management all of a sudden he was not allowed to perform his duty on and from 2nd May 2014 and thereby he was refused employment without having any justified cause. It is pleaded by the second party that when all his approach for employment did not yield any result, he filed a written complaint on 20th May 2014 before the District Labour Officer, Dhenkanal and ultimately when there could be no settlement of his grievance a failure report was submitted to the Government which culminated into the present reference. Specifically, it has been pleaded that from the date of his joining as a Driver under the management i.e. from 20th April 2009 till the date of termination by way of refusal of employment on 2nd May 2014 he had rendered continuous and uninterrupted service for more than five years, and more particularly for a continuous period of more than 240 days preceding the date of his illegal refusal of employment and as such he was entitled to the protection of the provisions of Section 25-F of the Act, inasmuch as, at the time of taking such action the first party was required to give him a month's notice or in lieu thereof notice pay for one

month and retrenchment compensation and owing to non-compliance of the said statutory provision, the action of the management is not sustainable in the eye of law, as it amounts to retrenchment of his service. It is averred that for his discharging technical nature of duty i.e. the duty of a Driver under the management, he is a 'workman' within the meaning of Section 2(s) of the Act ; the management is an 'industry' within the meaning of Section 2(j) of the Act and so also the dispute. under consideration having arisen out of his illegal termination of service by way of refusal of employment is to be construed as an 'industrial dispute'. On the aforesaid background, the second party has prayed for the relief of his reinstatement in service with full back wages and all consequential service benefits.

3. The first party i.e. M/s Tata Steel Ltd. entered contest in the dispute and filed its written statement. At the very out-set the first party has challenged the maintainability of the reference. It is stated that the Conciliation Officer without delving into the real dispute between the parties and without considering the objections raised by the management in the matter of employment of the second party submitted a failure report and consequently the Government in its turn also without application of mind has referred the dispute in an unjust and erroneous manner and therefore, the entire exercise leading to the present reference is a nullity in the eye of law. Elaborating the developments by which M/s Tata Steel Ltd. has taken over the management of M/s Bhusan Steel Ltd., it is stated that prior to the order of reference dated the 5th August 2018, corporate insolvency proceeding was initiated against M/s Bhusan Steel Ltd. before the NCLT vide C.P. No.(IB)-201(PB)/ 2017 on 3rd July 2017 wherein Interim Resolution Professional (IRP) was appointed and imposed a moratorium by order dated the 26th July 2017 as a result the powers of the Board of Directors of the Company was suspended and were given to the IRP in relation to the affairs and management of the Company in accordance with Section 17 of IBC and in furtherance thereof there were public announcements published in the Times of India; Odia daily 'The Sambad' and Marathi newspapers inviting claims from all the creditors including financial and operational creditors in accordance with Section 15 of IBC. On initiation of the insolvency proceeding, M/s Bamnipal Steel Limited, a wholly owned subsidiary of M/s Tata Steel Ltd. took over the management of M/s Bhusan Steel and, accordingly the name of the establishment was changed to M/s Tata Steel BSL Limited in 2018. Subsequently, by virtue of orders 29th October 2021 passed by the National Company Law Tribunal, Mumbai Bench, Mumbai, M/s Tata Steel BSL Ltd has amalgamated alongwith M/s Bamnipal Steel Ltd. into M/s Tata Steel Ltd. as a consequence whereof M/s Tata Steel Ltd., Meramundali came into picture as the successor-in-interest of the erstwhile management w.e.f. 11th November 2021. In view of the above, it is pleaded, the present claim being not part and parcel of the above process, the same is barred under law to be raised against the present management and further the second party having not chosen to participate in the Public Announcement, it amounts to giving up of his rights and any claim made at a later stage is not sustainable.

With regard to the merit of the claim, it is stated by the first party that the disputant was never a 'workman' covered under the definition of Section 2(s) of the Act and moreover there subsists no employer-employee relationship between the first party and the disputant in the matter of his employment/non-employment and as such no liability lies on the management of M/s Tata Steel Ltd. It is further averred in the written statement that the alleged claims made by the disputant stand extinguished due to operation of non- obstante clause provided under Section 238 of IBC which provides that it shall have an overriding effect with respect to any law which is inconsistent with the provisions of IBC. It has specifically been pleaded that the management had neither selected the disputant to work under it as a Driver w.e.f. 20th April 2009 nor the disputant has discharged his duty as a Driver or in any manual, technical, operational nature of job under the first party. Putting

much emphasis on the Duty Slips filed on behalf of the disputant, it is stated that the Duty Slips nowhere indicates that the same were issued to the disputant to drive the vehicles belonging to the first party. Disputing most of the averments of the claim statement, it is . stated by the first party that disputant had never rendered continuous and uninterrupted service under the first party and consequently it is false to allege that he was refused employment w.e.f. 2nd May 2014 by the first party in violation of the provisions of Section 25-F/N of the Act. In the above background, it is stated that there being no employer-employee relationship between the parties, the question of termination of the second party and compliance of the provisions of the Act do not arise at all and resultantly the reference be answered in the negative as against the disputant.

4. Based on the pleadings, the following issues have been framed by this Tribunal for determination:-

ISSUES

(i) Whether the case is maintainable?

(ii) Whether the action of the management of M/s Tata Steel Ltd., At Narendrapur, P.O. Kusupanga, Dist. Dhenkanal in terminating the services of Shri Pankaj Kumar Sahoo, Ex-Driver w.e.f. 2nd May 2014 is legal and/or justified ?

(iii) If not, what relief the workman Shri Sahoo is entitled to ?

The second party in order to substantiate his stand has examined himself as WW 1 and relied on documents which have been marked as Exts.1 to 6. The first party, on the other hand, has examined one Shri Rakesh Dimri, Senior Area Manager-HR as MW 1 but did not chose to adduce any documentary evidence insupport of its stand.

FINDINGS

6. *Issue No.(i)*—Much emphasis having been laid on the maintainability of the reference as well as the claim advanced on behalf of the disputant, I would like to deal with the said aspect at the first instance. There is no quarrel over the fact that M/s Tata Steel Ltd. is not an 'industry'. But, the management seems to have challenged the status of the disputant on the ground that he is not a 'workman'. In the wake of such challenge, it is felt apposite to re-produce the statutory meaning of 'workman' as embodied In Section 2(s) of the ID Act.

> "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, sales promotion, operational, clerical or supervisory or any work for promotion of sales for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person ho has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -
>
> (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
>
> (ii) who is employed in the police service or as an officer or other employee of a prison ; or
>
> (iii) who is employed mainly in a managerial or administrative capacity ; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercise, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

Keeping in view the statutory meaning of 'workman' as stipulated in the Act and on going through the pleadings of the parties this Tribunal is of the opinion that as the post of Driver comes under 'technical' category as defined under Section 2(s) of the Act and the driving license (Ext. 1) proved and marked on behalf of the disputant discloses that he has been authorised by the Licencing Authority to drive LMV as well as Transport vehicles, the argument advanced on this score is of no help to the first party. On the face of the statutory meaning attached to the definition of 'workman' and the documentary proof placed on record, this Tribunal is of the firm view that the disputant is a 'workman' coming within the definition of Section 2(s) of the Act.

7. Further contention of the management that the Government without application of mind has referred the instant dispute for adjudication by this Tribunal does not hold good, as the Government only after its subjective satisfaction to the effect that there exists a dispute has referred the schedule for adjudication and the Tribunal being a creature of the statute lacks competency over the reference made by the Government, hence the reference is held to be maintainable in this Forum.

8. Next, it is contended emphatically on behalf of the first party that M/s TAta Steel Ltd., having taken over the concern of the erstwhile management as successor-in-interest only on 11th November 2021 owing to initiation of insolvency proceeding against the erstwhile management M/s Bhusan Steel Ltd., it has absolutely got no connection with the employment/non-employment of the disputant and further the second party having not chosen to participate in the Public Announcement made pursuant to the provisions of Section 17 of IBC, not only the claim of the second party is not sustainable in the eye of law but also the reference made pursuant to such claim by the second party is not maintainable as against M/s Tata Steel Limited. In support of his contention, learned counsel representing M/s Tata Steel Ltd. has referred to the orders dated the 10th August 2018 passed by the Hon'ble Supreme Court in the Case of Pr. Commissioner of Income Tax *Vs.* Monnet Ispat and Energy Limited (SLA ©No. 6483 of 2018) and contended that since Section 238 of the Insolvency and Bankruptcy Code, 2016 provides for a non-obstante clause by which, it shall have an overriding effect with respect to any law, which is inconsistent with the provisions of the IBC, the second party having failed to lay claim before the IRP his claim stands extinguished due to operation of the above non-obstante clause.

Per contra, it has been argued on behalf of the second party that when the claim of the second party was not at all adjudicated in any forum, it was not practically possible for him to lay any claim when Public Announcement was made pursuant to the provisions of Section17 of the IBC. Further it has been argued that Industrial Disputes Act being a beneficial legislation enacted to safeguard the interest of the working class, it is not correct to argue that for non-approaching the IRP, claim of the second party for reinstatement and back wages owing to the alleged termination of his service stood extinguished due to operation of the non-obstante clause. He went on to argue that the newly arrayed party M/s Tata Steel Ltd. cannot avoid the statutory liability on the ground that it acquired the company under Insolvency Proceeding under IBC and in the context he referred to a decision of the Hon'ble Apex Court in Bhagaban Dass Chopra *Vs.* United Bank of India, reported in 1988 Lab.I.C.366.

9. In order to arrive at a conclusion over the submissions of the respective party, I would like to place on record some factual aspects of the case. The conciliation failure report annexed to the order of reference discloses that on a complaint regarding termination of his service being lodged by the second party on 20th May 2024 against the erstwhile management of M/s Bhusan Steel Ltd., the management took part in the conciliation proceeding, but on failure of the conciliation on 10th June 2015 the present reference was made to this Tribunal on 5th May 2018 for adjudication of termination of services of the second party. However, on account of initiation of insolvency 'proceeding against the erstwhile management of M/s Bhusan Steel Ltd. ultimately M/s Tata Steel Ltd. took over the management of M/s Bhusan Steel Ltd. w.e.f. 11th november 2021. In view of the above, it is not wrong to assume that M/s Bhusan Steel Ltd. was fully aware about the dispute that has been raised against it by the second party prior to initiation of the insolvency proceeding against it. The plea of M/s Tata Steel Ltd. that the second party having not participated in the Public Announcement made pursuant to the provisions of the IBC has waived off his right and cannot pursue his remedy subsequently under any other forum, is considered to be a technical ground and solely basing on the same it cannot be said that the second party has lost his legal right and has become remediless to ventilate his grievance in the matter of his alleged illegal termination of service. Moreover, when the claim of the second party was with regard to alleged termination of his service by the first party and the process thereof was pending adjudication it cannot be conceived that,could have placed his claim before the IRP pursuant to the Public Announcement like any other Creditors. As M/s Bhusan Steel Ltd. was fully aware about the dispute raised by the second party, M/s Tata Steel Ltd. though has taken over the management at a later stage cannot avoid the statutory liability; if any, which would flow as a result of the Award to be passed in the case. In the context, I may refer to the observations of the Hon'ble Apex Court in the case of Bhagwan Dass Chopra *Vs* United Bank of India, reported in AIR 1988 (SC)215, wherein it has been held :-

> "It is, however, necessary to evolve a reasonable procedure to deal with cases where a devolution of interest takes place during the pendency of a proceeding arising under the Industrial Disputes Act, 1947, In the circumstances it is reasonable to hold that in every case. of transfer, devolution, merger, takeover or a scheme of amalgamation under which the rights and liabilities of one company or corporation stand transferred to or devolve upon another company or corporation either under a private treaty, or a judicial. order or under a law the transferee company or corporation as a successor-in-interest becomes subject to all the liabilities of the transferor company or corporation and becomes entitled to all the rights of the transferor company or corporation subject to the terms and. conditions of the contract of transfer or merger, the scheme of amalgamation and the legal provisions as the case may be under which such transfer, devolution, merger, takeover or amalgamation as the case may be may have taken place. xx xx xx xx xx"

Apropos the discussions held above, this Tribunal is of the view that the claim put-forth by the second party is maintainable in this forum.

Issue No.1 is answered accordingly.

10. *Issuee No. (ii)*—This issue relates to adjudication of the justifiability of the action of the management in terminating the services of the second party w.e.f. 2nd May 2014.

On this issue, the parties are at variance on their respective stand, inasmuch as, while the second party asserts that on his application he was selected to work as a Driver under the first party on a fixed monthly wages of Rs. 3000 w.e.f. 20th April 2009; discharged his duty continuously for a period of nearly five years but all of a sudden without any reasons and rhyme his service has been terminated w.e.f. 2nd May 2014, the stand of the first party is that the second party was never working under the management at any point of time being appointed by it for which he is not able to prove his continuous engagement for 240 days.

The rival assertions leade this Tribunal to . examine the oral and documentary evidence as well as materials available on record. The second party adduced evidence in the case and put much emphasis on his Bio-data (Ext. 3) as well as the Duty Slips issued in his favour by the management (Ext. 2) to prove his employment under the management and stated that although he was working as a Driver under the management he was not issued with any appointment letter. To encounter this, the management referred to the cross-examination of WW 1 wherein the second party has stated in his cross-examination at Para. 17 that he has not furnished any document in support of his discharging duty under the management for more than 240 days in a year and continuous service for five years. But in the same paragraph he has stated that all the documents pertaining to his employment were in the custody of the erstwhile management. On the other hand, MW 1 who has been cited as a witness on behalf of the management has stated in his cross-examination at Para. 13 that in the year 2009 the Attendance Register, Payment of Wage Register, Leave Register, Payment, of Bonus Register and all other statutory registers were being maintained by the HR. Deptt. of the first party. He has also admitted that without verification of the above stated Registers he has deposed in the Tribunal. Though he stated' to have not known any Driver Pankaj Kumar Sahoo (second party) by name, yet he admitted that there is no documentary support in respect of his personal knowledge regarding non-employment of the second party under the first party. It has been elicited from his mouth during cross-examination at Para. 14 that he knows Shri Mahendra Pratap Singh as well as Md. Nausad and that said Mahendra Pratap Singh was representing the first party while he was in the P&A. Deptt. On confrontation of EXt. 6 MW 1 admitted that Mahendra Pratap song has filed the Power of Attorney on behalf of M/s Bhusan Steel Ltd. in the present proceeding. It has further been elicited from cross-examination of MW 1 at Para. 15 that he signatures Ext. 3/a and Ext. 6/a appearing on Ext. 3 (Bio-Data of the second party) and Ext. 6 (the Power of Attorney executed in favour of DGM, P&A) respectivly are of Mahendra Pratap Sing. In veiw of the above, the Tribunal does not find any reason to doubt over the authenticity of the document, Ext. 3. Further, the Duty Slips filed and proved as Ext. 2 to some extent lend support to the engagement of the second party as a Diriver under the first party as it reflects the name of M/s Bhusan Steel Ltd. and aslo contains name of the second party, serial number as well as signature of the Transport Officer. On the face of the above, therefore, it becomes clear that the second party was under the employment of the management as a Driver.

11. Now it is to be seen as to whether the second party by virtue of his engagement under the management had rendered continuous service for 240 days preceding the date of his alleged termination so as to claim protection of the provisions of the Act. In the context, it is pertinent to note that in order to claim protection of the provision of Section 25-F of the Act, the burden is on the disputant-workman to establish that he had rendered continuous service for more than 240 days preceding the date of his termination to get the relief(s). Though Section 25-F of the Act is plainly

intended to give relief to retrenched workmen, yet the qualification for relief under Section 25-F is that he should be a workman employed in an industry and has been in continuous service for not less than one year under an employer. What is continuous service has been defined and explained in Section 25-B of the Act. In the present case, the provision which is of relevance is Section 25-B(2)(a)(ii) which provides that a workman who is not in continuous service for a period of one year shall be deemed to be in continuous service for a period of one year if the workman during a period of twelve calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than 240 days. In the context, a reference may be made to the case of R.M. Yellatti *v.* The Asst. Executive Engineer (JT 2005 (9) SC 340), wherein their Lordships of the Hon'ble Apex Court have held as follows :

> "Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading. the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given . This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workm adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earlies, there will be no letter of appointment or termination. There will also be no receipt of proof of payment. Thus, in most cases the workman (the claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case."

12. In the case in hand, though it is the consistent stand of the second party as well as his evidence that he has rendered continuous service for a period nearing five years, yet he is required to establish the fact of such continuous employment under the employer at least for a period of more than 240 days preceding the date of his alleged termination of service so as to examine the compliance part of the provisions of Section 25-F of the Act. "Continuous Service" being a condition precedent to set into motion the provisions of Section 25-F of the Act, unless the same is proved the termination in question connot b looked into.

To substantiate his case, the second party examined himself as WW 1 and claimed to have worked under the first party as a Driver. His evidence in chief examination is nothing but repetition of the claim as set out in the claim statement. On perusal of the documentary evidence exhibited from the side of the second party i.e. Exts.1 to 6 nothing emerges there from to infer that he had rendered continuous employment under the first party for a period of more than 240 days preceding the date of his alleged termination of service. However, the record discloses that in order to prove employer-employee relationship between him and the management as well as continuous service under it the second party had filed a petition on 13th June 2022 seeking a direction to the first party to cause production of some documents including Original Bio-Data of the second party; Wages Acquaintance Vouchers/Register of Wages of Transport Department year 2009 to May,2014 and corresponding cash book entry/posting thereof for the aforesaid period;

Vehicle Log Books from 2009 to May 2014; Vehicle Duty Slips from 2009 to May 2014 and consequently an order was passed by this Tribunal directing the Management to cause production of the above documents but the management denied to have in its possession the Original Bio-Data of the second party and so also the Wage Acquaintance Vouchers through which payment was made to the second party and further taking a stand that the vehicle Log Books and Vehicle Duty Slips have been destroyed, the reason being that the vehicles in question were not in operation any more. It is pertinent to note that MW 1 has stated in his cross examination that in the year 2009 Attendance Register, Payment of Wages Register, Leave Register, Payment of Bonus Register and all other statutory Registers were being maintained by the HR. Deptt. of the first party. In view of the evidence coupled with the fact that it was within the knowledge of the first party that a dispute relating to termination of the second party was alive, for non-production of documents which were essential to throw light on the engagement of the second party under the first party and his continuance under it for a period of more than 240 days, an adverse inference can be drawn to the effect that had the desired documents been produced it would have revealed engagement of the second party as a Driver under the first party and an inference would have been drawn as to his continuous engagement under it. M/s Tata Steel Ltd. being the successor in interest of the erstwhile management ought not to have taken it lightly and should have made all endeavour to obtain the documents, particularly when MW 1 has deposed to have seen maintenance of the aforesaid Registers including other Statutory Registers by the erstwhile management. In the aforesaid background the Tribunal is of the view that despite direction the management having withheld best evidence for consideration by the Tribunal, a presumption can be drawn to the effect that the second party had rendered continuous service under the management for more than 240 days preceding the date of his termination. Scrutiny of materials available on record since reveals that while terminating the service of the second party the management had not complied with the mandatory requirements of the Act, its action can in no way be held either legal or justified.

The Issue No. (ii) is answered accordingly in favour of the second party.

13. *Issue No. (iii)*—In view of the finding arrived at on Issue No. 2, the next question which has come up for consideration is as to what relief the second party is entitled. In the context, I would like to refer to a judgment of the Hon'ble Supreme Court in Case of GDA *v.* Ashok Kumar [(2008) 4 SCC 261], wherein their Lordships of the Hon'ble Apex Court have held that the relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature, may be appropriate.

The settled proposition of law is therefore the relief of reinstatement can be granted only in exceptional cases and such discretion may be exercised in cases where the employee has joined the service after going through the entire selection process against a sanctioned post and has remained employed for a sufficient long period. The Tribunal is also to see the time lapse between the cessation of employment and the final order. In the case in hand, the second party is found to had not been engaged under the management following due procedure and could manage to get an engagement on the recommendation of the then DGM, P&A of the erstwhile management. So taking into consideration the mode of engagement; length of employment and the age of the second party and the fact that the management under which he was engaged has in the meantime been taken over by M/s Tata Steel Ltd. in the process as discussed *supra*, a monetary compensation of

Rs. 1,00,000 (Rupees one lakh) only in lieu of reinstatement and back wages is found to be a an appropriate relief in favour of the second party. Accordingly, the M/s Tata Steel Ltd. being the successor in interest of M/s Bhusan Steel Ltd. is directed to pay the awarded compensation to the second party within a period of two months of the date of publication of the 'Award' in the Official Gazette, or else the awarded compensation would carry a simple interest of 6% per annum till its realisation.

Issue No. (iii) is answered accordingly.

Dictated and corrected by me.

BENUDHAR PATRA
29-06-2024
Presiding Officer
Industrial Tribunal, Bhubaneswar

BENUDHAR PATRA
29-06-2024
Presiding Officer
Industrial Tribunal, Bhubaneswar

[No. 5748—LESI-IR-ID-0062/2024-LESI]

By order of the Governor

NITIRANJAN SEN

Additional Secretary to Government

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